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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re H.C., Jr., a Person Coming Under the  
Juvenile Court Law.

B207924

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK32646)

Plaintiff and Respondent,

v.

Y.C. et al.,

Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County. Jan G. Levine, Judge. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant Y.C.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant H.C.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

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This matter involves 10-year-old H.C., who is the middle child in a family of five children. H.C.'s parents, Y.C. (Mother) and H.C., Sr. (Father),<sup>1</sup> are divorced and separately appeal the termination of their parental rights over H.C.<sup>2</sup> Mother joins in Father's contention that the sibling exception applies to reverse the termination of parental rights and also separately argues that her parental rights should not be terminated because her diligence regarding visitation and her corresponding relationship with H.C. precluded termination. We affirm.

### **FACTS**

H.C. has two older siblings, a 13-year-old brother and a 15-year-old sister, who were born in Hong Kong. Mother moved to the United States with H.C.'s older brother and sister in 1997. Their biological father continues to reside in Hong Kong, but his current whereabouts are unknown. H.C. and his two younger siblings, both boys, aged six and four, were born in the United States. Father is the biological father of H.C.'s younger brothers.

#### **A. Prior Detentions**

The Department of Children and Family Services (DCFS) first encountered the family in 1998 when H.C.'s older brother was found alone in a locked car and H.C. and his older sister were found home without any adult supervision. H.C. and his two older siblings were declared dependents of the court under Welfare and Institutions Code section 300,<sup>3</sup> subdivisions B and G. The children were placed in foster care and then returned home on April 21, 1999. H.C. and his older siblings were again removed from

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<sup>1</sup> Father has denied he is the biological father of H.C. No DNA test has been performed to confirm this. For purposes of this matter, we treat Father as H.C.'s presumptive father. Father does not dispute this status.

<sup>2</sup> The status of the other four children are not at issue in this appeal.

<sup>3</sup> Further section references are to the Welfare and Institutions Code, unless otherwise specified.

the home on July 13, 2000, when H.C., then 2-years old, was found outside the apartment complex without parental supervision and his older brother was found home alone. Mother and Father also allegedly engaged in domestic disputes and combat in the presence of the children. They were returned to their parents, but another petition was filed on June 5, 2001, alleging physical abuse of H.C. and his older brother by Father and Mother. The allegations were sustained and the children were again removed from the home on July 9, 2001 for suitable placement. In February 2002, the court terminated the order of suitable placement and the children returned home. Family maintenance services were ordered for the family and the court terminated jurisdiction on November 27, 2002. In 2004, when his younger brother was born, H.C. was sent to live with his maternal grandmother in Hong Kong because he did not adjust well to having a younger brother and his parents believed he would harm him. H.C. remained in Hong Kong until 2005 when his grandmother died. DCFS has had an open voluntary family maintenance case on the children since March 21, 2005, when one of H.C.'s younger brothers was found tied to a post with leashes in the living room.

#### **B. Current Detention**

On December 13, 2005, Father brought H.C.'s older brother to the Garfield Medical Center with a deep scalp laceration on the left side of his head. Medical staff were told he was playing by the pool the night before, fell and hit his head. Medical staff, however, noticed he also had older unexplained injuries to his body. Another section 300 petition was filed on December 15, 2005, alleging that H.C.'s older brother sustained a severe head injury that required immediate medical attention but Father waited 24 hours before bringing him to the hospital. The petition further alleged he sustained bleeding lacerations to his back, stomach, arms and legs on prior occasions which were in varying stages of healing and burns to his abdomen and chest. Father and Mother gave no explanation how these injuries came about but the "injuries are of such a nature that would ordinarily not be sustained except as the result of unreasonable or

neglectful acts of the children's mother and [Father] who had care, custody and control of the child. . . .”

At the detention hearing on December 16, 2005, the juvenile court found a prima facie case had been established for removing all five children from Father's care. Because Mother had moved out of the home prior to the incident, the court released the children to her care on the condition she move back into the home and Father move out. The court initially granted Father monitored visits but they were eventually liberalized so he could help Mother take care of the children, such as driving them to school and medical appointments. Thereafter, Mother and Father reconciled and decided to move the family to Las Vegas to start a new life. However, a transfer of the case to Nevada could not be initiated until the case was adjudicated in California. Under order of the court, the children were enrolled in public school but had sporadic attendance.

When the caseworker arrived at the home on January 27, 2006 for a visit, it appeared that Mother had moved out with H.C. and one of his younger brothers, leaving Father to care for the remaining three children in the home in violation of the court order. The family appeared to be packed and ready to move to Las Vegas. Further, H.C.'s older sister was so traumatized by the events and her parents' constant fighting that clumps of her hair were falling out. She was found sobbing in her room during the caseworker's visit. Later that day, Father advised the caseworker that she had “disappeared and he thought that she had jumped down the hill or ran away.” After searching the area with assistance from the LAPD helicopter and other dispatch units, she was found hiding in a box inside the home.

“Due to the fact that the parents have violated court orders as to the living arrangement and that the children have continued to suffer emotionally and being placed at high risk of physical and emotional harm because of the parents' continuous disputes in front of the children and their unstable relationship and their numerous ‘plans’ for the family, the children were detained and placed in foster care pending further court orders.” The children were placed in separate homes, but sibling visits were ordered a minimum

of once a week and parent visits three times a week by order dated February 1, 2006. The parents were also allowed daily phone calls. In an interim review report dated February 23, 2006, DCFS noted that the children were adjusting to their respective foster homes. However, the caseworker's attempts to negotiate a plan with Mother and Father to facilitate the return of the children ended with mixed results.

Prior to the disposition hearing, the juvenile court ordered psychiatric evaluation of Mother and Father by Dr. Terry Gock. Dr. Gock "strongly" recommended continued counseling for the parents as well as the children before the children could be returned home and concluded the current issues within the family stemmed from the breakdown of Mother and Father's marriage. Dr. Gock observed that Father "tend[ed] to be demanding and insisting on getting his way in his interpersonal relationships, especially with family members and close associates. His somewhat exaggerated sense of self-importance and confidence makes him persistently seek affirmation from others, and his sense of inadequacy would be evoked when such is not forthcoming from his perspective. These narcissistic personality traits that are a part of his habitual pattern of relating, behaving, thinking and feeling likely stems from an underlying feeling of inadequacy. They also often lead to his tendency to rationalize his interpersonal problems, blame others for these difficulties, and react with impulsive anger toward other[s]." Of Mother, Dr. Gock observed she had "some dependent personality traits in her beliefs, behaviors, and relationships with others . . . . As she noted during [the] session[s], she would express herself only when '(she) could not take it anymore and (then) explode.' "

In connection with the disposition hearing, the juvenile court was presented with recommendations from all parties. Mother and Father proposed that Father take custody of H.C.'s older sister and his two younger brothers while Mother worked to reunify with H.C. and his older brother. This proposal was supported by the psychologist hired by Mother and Father to offer a second opinion after Dr. Gock's analysis. DCFS proposed additional therapy for the family, a referral for family preservation services for Father and

H.C.'s two younger brothers, and to move H.C.'s older sister to another foster family and H.C.'s older brother to H.C.'s foster home.

### **C. Three Children Are Returned to Father**

The June 7, 2006 court-ordered disposition case plan kept H.C. and his older brother in foster care and allowed his three other siblings to go home to Father. The court also ordered Mother and Father to complete a parenting education program, further counseling for the family, and monitored visits with Mother until she started individual counseling. DCFS was ordered to provide family reunification and maintenance services. Under the case plan, H.C.'s older brother moved into H.C.'s foster home. Neither H.C. nor his brother had contact with Mother or Father for seven weeks after the disposition hearing.

After the hearing, Father decided he could only handle four children without stress and began to alternate between which child he wanted to reunify with depending on who was misbehaving. For example, on one occasion, Father picked up H.C. only for a visit and left his "devastated" older brother behind. When the caseworker asked him about it, Father said H.C. was "such a great kid" while his older brother misbehaved and did not do as he asked. He said, "that boy is never going to be returned to my home. I do not like to beg him to do things. I do not want to beg him to join us. If he wants to join us, he has to be good. He [] is behaving like this because [the previous foster mother] just spoiled him when he was placed with her for 6 months. She had to beg him to do things or called me to talk to him on the phone." On August 22, 2006, Father asked to reunify with H.C.'s older brother, who was getting along well with everyone, and leave H.C. in a foster home. The children's therapists believed that separating the boys would do more harm than good and that Father's conduct increased the sibling rivalry between them to an unhealthy degree.

In an October 30, 2006 letter to the caseworker, H.C.'s therapist reported "that he does not want to have anymore overnight weekend visits with his step-father . . . [H.C.] stated that when he comes home for the overnight weekend visits, [Father] is intoxicated

and ‘says hurtful things.’ He alleged that [Father] is intoxicated every time he has his overnight visits. According to [H.C.], when his stepfather is intoxicated he tells him that he wants ‘the two younger ones [children], not the three older ones because they are not his.’ [H.C.] also reported that he is ‘sad and misses his “real father” [but does not have a relationship with him] when [he] visits with [his] step-father.’ He reported feeling very bad and sad because of his secrets and said that [his older brother] would be upset with him for disclosing family secrets.”

Sometime in November of 2006, Father disowned H.C. as a result of his comments to the therapist. According to the foster mother, Father refused to speak to H.C. from November to January. As a result, H.C.’s relationship with his sister was also affected; Father and H.C.’s older sister only called for H.C.’s older brother and disparaged H.C. during these calls, which were conducted on speakerphone and were heard by H.C. Father also bought H.C.’s older brother a bicycle and did not bring H.C. anything. When the foster mother told Father she was going to ask the brothers to share the bicycle, Father said he did not want H.C. to use the bicycle because “he is no longer [] his son.” He further denied he got drunk during the weekend and told the caseworker, “ ‘as far as [H.C.] is concerned, he is no longer my son. I won’t touch him with a 10 foot pole.’ ” He also informed the caseworker that since he was not allowed to see H.C.’s older brother without H.C., he would just not see them both.

#### **D. Mother’s Participation in Case Plan**

Throughout this period, Mother had sporadic visits with H.C. and his older brother at the foster home. According to H.C.’s foster mother, Mother visited H.C. 10 times at his foster home between July 28, 2006 to October 24, 2006, nine times between November 10, 2006 to January 24, 2007 and six times from February 19, 2007 to May 29, 2007, averaging twice a month. The foster mother also reported that Mother did not talk or do much with H.C. outside of playing computer games with them and the boys expected her to bring them things when she visited. In a November 1, 2006 interim review report, however, DCFS advised the juvenile court that “[t]he boys and their

caretakers and service providers have reported that [Mother's] visits have gone well.” As a result of her progress, DCFS recommended and the court granted Mother unmonitored visits on the condition she continue with individual counseling and begin conjoint counseling with the boys’ therapist. However, Mother put off conjoint counseling for another eight months, claiming she could not immediately begin conjoint counseling with H.C. and his older brother because of her busy work schedule and a planned vacation. Then, she claimed the therapist’s schedule did not work with hers. Because she had not started conjoint counseling, her visits remained monitored. She finally began conjoint counseling on June 26, 2007. Mother visited the boys six times between September 19, 2007 to December 12, 2007, including spending Thanksgiving dinner with them at the foster home.

Psychological evaluations of Mother have concluded that her attempts to reunify with her children have been less than successful. H.C.’s therapist advised that H.C. and his older brother were resigned to adoption. She felt Mother had demonstrated an inability to attach to H.C. and his older brother by failing to: (1) “attempt to develop a connection with her children through daily telephone calls or weekly visits[;]” (2) “demonstrate any interest in knowing how the[] boys have developed during the past nineteen months[;]” (3) “ask[] [the therapist] or the foster mother about the boys’ behavioral challenges or how she could manage these challenges if she were to reunite with them[;]” (4) have her boyfriend live scan or participate in therapy sessions[;] and (5) have consistent visits.

Dr. Howard, a psychologist hired by Mother and Father, reported in May 2006: “While [Mother] has improved in her caring and desire to immediately reunite [with] the other two children, she may be not yet ready for it. I recommend her to continue individual counseling . . . and start conjoint counseling with the children with another therapist.” Dr. Howard’s conclusion was borne out by Mother’s unrealistic request for custody of all five children at the 2007 permanent plan hearing even though she lived with her boyfriend, who had not been live scanned, in a one-bedroom apartment.



In a July 16, 2007 interim report, the caseworker recommended that family reunification services for Mother be terminated and asked the court to order another psychological evaluation of the family. However, Mother failed to make an appointment with Dr. Gock and he was unable to provide a report to the juvenile court.

#### **E. Prospective Adoption of H.C. and His Older Brother**

In late 2007, a prospective adoptive family was identified for the boys. While H.C. was enthusiastic about adoption, his older brother was more amenable to living with the prospective adoptive family under foster care. Both boys wanted to maintain contact with their biological family. The prospective adoptive parents said they did not object to maintaining such contact. The boys moved in with the prospective adoptive parents on December 26, 2007 after several meetings and overnight stays. They were enrolled in a new school in January 2008, and began after school programs and activities. H.C.'s older sister objected to the adoption but had only seen H.C. twice in the last six months and had sporadic telephone contact with him. Father also objected to the adoption. The boys' therapist reported daily communications with the prospective adoptive parents and concluded that they are "accepting of the behavioral and emotional challenges" and were "very invested in caring for and meeting all of the boys needs and have already begun to provide them with a supportive and extended environment that includes neighbors, friends, their church, as well as their extended family." DCFS recommended that the permanent plan for H.C. and his older brother be adoption.

On May 12, 2008, without objection from any party, the court appointed the prospective adoptive parents as legal guardians to H.C.'s older brother because he objected to termination of Mother and Father's parental rights. The juvenile court, however, found that it would be detrimental to H.C. to be returned to Mother and Father and terminated parental rights. The court nevertheless ordered DCFS to facilitate sibling visits and monitored visits for Mother in a therapeutic setting. Mother and Father separately appealed.

## DISCUSSION

### I. The Sibling Relationship Exception Does Not Apply

Section 366.26, subdivision (c)(1)(B)(v) directs the juvenile court to terminate parental rights and order a child placed for adoption unless: “There would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26(c)(1)(B)(v).) First, the court must determine whether terminating parental rights would substantially interfere with a sibling relationship; and second, the court must weigh the child’s best interest in continuing the sibling relationship against the benefits of adoption. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951-952.)

The mere existence of a friendly sibling relationship does not trigger the sibling relationship exception. “To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at p. 952, fn. omitted.) Even if severance of a sibling relationship would result in the child’s detriment, the court must still weigh the benefit to the child of continuing the relationship against the benefit to the child adoption would provide. (*Id.* at pp. 952-953.) The sibling relationship exception “ ‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ [Citation.] At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The

statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

In this case, no evidence in the record shows that the termination of parental rights will substantially interfere with the sibling relationship. From all indications, H.C. will continue to have a relationship with his older brother since he will be in the same household. Also, the juvenile court has ordered DCFS to facilitate visits with his other siblings, providing a safeguard that H.C. will continue to have contact with them. Moreover, H.C.’s adoptive parents have no objections to H.C. maintaining a relationship with his biological family. In any event, we are skeptical that H.C. shared such significant common experiences or developed a strong bond as described under section 366.26, subdivision (c)(1)(B)(v) with his siblings. H.C. has been in and out of foster care since he was less than a year old. During this current detention, he has been away from his family for two years. He was sent to live with his grandmother in Hong Kong from late 2004 to 2005 when he was six. Also, his relationship with his sister has deteriorated due to Father’s influence. These facts serve to negate a beneficial sibling relationship.

Nor have Mother and Father established the existence of a sibling relationship that is so strong as to override the benefits of adoption to H.C. The record shows H.C. has been with his adoptive parents since December 2007. Since then, the record indicates H.C. has become quite attached to his adoptive parents and has benefitted from regular attendance at school and after school programs. H.C.’s sporadic contact with his other siblings do not outweigh the benefits of the stability and support provided by his adoptive parents. Accordingly, the juvenile court did not err in declining to apply the sibling relationship exception under these circumstances.<sup>4</sup>

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<sup>4</sup> To bolster their opposition, DCFS requests we augment the record with additional evidence and take judicial notice of events occurring after the appeal. In particular, DCFS would have us acknowledge that Father has refused to allow the children in his custody to have contact with H.C. or his older brother since the appeal; H.C.’s older

## II. The Continuing Beneficial Relationship Exception Does Not Apply

Mother separately argues that subdivision (c)(1)(B)(i) of section 366.26 prevented the termination of her parental rights because she regularly visited H.C. and thereby nurtured a beneficial relationship with him. The continuing beneficial relationship exception under section 366.26 states that parental rights may not be terminated where “[t]he court finds a compelling reason for determining that termination would be detrimental to the child [when] . . . [¶] . . . [t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) Even if we agree that Mother “regularly” visited H.C. (which we do not), and that such a beneficial relationship with him existed, we cannot say it outweighs the benefits to H.C. of having a stable, permanent home. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

By the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and adoption is the Legislature’s first choice because it gives the child the best chance at a stable and permanent placement. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256; *In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195-1196.)

“So viewed, the exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. The section 366.26, [former] subdivision (c)(1)(A) exception is not a mechanism for the parent to escape the consequences of having failed to reunify. That opportunity is provided by section 388, which permits a parent to petition for reconsideration of the

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brother has now requested adoption; and Father has moved H.C.’s other siblings out of state without the juvenile court’s consent and refuses to disclose their whereabouts or return them to California. Because we find the record as it exists amply supports the judgment, we see no need to augment the record or take judicial notice as requested. Therefore, the motion to take additional evidence on appeal and the request for judicial notice is denied.

reunification issue based on a finding of changed circumstances. (Citation.)”

(*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

Here, the record shows H.C. may still be able to maintain a relationship with Mother after termination of parental rights. The juvenile court ordered monitored visits with Mother in a therapeutic setting. Moreover, H.C.’s adoptive parents have expressed a willingness to allow H.C. continued contact with his biological family. It would appear that the court orders give H.C. the best of both worlds—continued access to Mother and a stable, permanent home.

Mother suggests that *In re S.B.* (2008) 164 Cal.App.4th 289 is instructive here and requires reversal, but we disagree. There, the Fourth District reversed the trial court’s order terminating the father’s parental rights on the ground the continuing beneficial relationship exception did not apply. (*Id.* at p. 293.) The father “maintained a parental relationship with S.B. through consistent contact and visitation. His devotion to S.B. was constant, as evinced by his full compliance with his case plan and continued efforts to regain his physical and psychological health. The record shows S.B. loved her father, wanted their relationship to continue and derived some measure of benefit from his visits. Based on this record, the only reasonable inference is that S.B. would be greatly harmed by the loss of her significant, positive relationship with [the father].” (*Id.* at pp. 300-301.)

Contrary to the father’s full compliance with the case plan in *In re S.B.*, the same cannot be said of Mother’s compliance with her case plan. At best, the record shows Mother has been reluctant and tardy in fulfilling her obligations. Although she was allowed three visits per week and daily phone calls, Mother only averaged twice a month visits to H.C. during 2007 and there is no indication she called him every day, if at all. The record also indicates she failed to engage H.C. during these visits beyond bringing him gifts and playing computer games with him. She also failed to begin conjoint counseling with the boys for many months, even though doing so would have allowed her unmonitored visits. Moreover, H.C.’s therapist has concluded that Mother has failed to establish an attachment with H.C. or his older brother despite extensive counseling and

parenting classes. Finally, H.C. has expressed a preference to be adopted and no longer asks to reunite with Mother. Given these facts, we decline to reverse the trial court's order terminating Mother's parental rights. She has failed to establish that the continuing beneficial relationship exception applies.

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

BIGELOW, J.

We concur:

FLIER, Acting P. J.

O'NEILL, J.<sup>\*</sup>

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<sup>\*</sup> Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.